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ABSTRACT

This speech examines the legal aspects of the California "Stull Bill," which governs the evaluation of public school teaching and administrative personnel. The author discusses the impact of the Bill on both teacher tenure and teacher evaluation and suggests that the teacher evaluation section has far more impact than does the teacher tenure section. (JF)

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EVALUATION OF SCHOOL PERSONNEL

EA 004 479

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A talk by
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The 1971 California State Legislature enacted two comprehensive new laws governing the evaluation of public school teaching and administrative personnel. One of these laws, known as the "Stull Bill" after its principal author, Assemblyman John Stull, governs the evaluation of teachers and administrators employed in kindergartens thru grade 12; the other new law, known as the "Rodda Bill" because it was authored by Senator Albert Rodda, applies to the evaluation of teachers and administrators employed in the community colleges of California, which is the new name for the "junior colleges" in which students enroll for grades 13 -- 14.

You have before you two pieces of paper. One has writing on both sides and one doesn't. The one with the writing on both sides is a summary analysis of the "Rodda Bill" pertaining to the California community or junior colleges. The sheet which is blank on one side is a "birds-eye view" of the "Stull Bill" affecting the evaluation of teachers and administrators in the public elementary and secondary schools of California. It is this sheet, the one that is blank on one side, which we will consider in the few minutes alloted to the topic of evaluation.

Someday, the 1970's may become known as the "decade of accountability" in public education. The frustration over the growing effectiveness of teacher collective negotiations; the burgeoning tax rate to support the federal, state and local governments, including school districts; the dramatic introduction of computer sciences to many of the important areas of private business and governmental operation; the widespread dissatisfaction with the public school systems by minority race groups; the lack of general understanding by our citizens

of the encompassing and pervasive effect of the "childrens revolution" which has seen the Courts and the Legislatures bestow rights and "degrees of status" to young people absolutely unheard of in years past; the cancerous erosion of family organization and strength; the wealth and affluence of children today which has resulted in a substantial part of our private business economy pandering to the whimsies of kids; the disillusionment of young people with the "Protestant ethic" of "work" and "storing up for the future" (which we believe made our nation great--but which many kids tend to claim has made us slaves to materialism--and when we vigorously say that a "man is what he does," They, with equal vigor argue that "being" is more important than "doing"); and the attempt to loosen the so-called arbitrary restraints upon the conduct of man which for generations has been known as the "moral code" in favor of a permissive, "Let-everything-hang-out" philosophy... All of these have merged and focused in on the public schools because we have the children--and this has resulted in a demand that school teachers must do a "better job" with the kids. This "demand" is heard loudly and clearly by State Legislatures, which are the master school boards in their States. As a result, in California, and other states of the nation, the State Legislatures have zeroed in on teacher evaluation as the means of bringing more accountability into the schools.

At first blush, evaluation of teachers and administrators appears as a strictly personnel management problem. But, when it is realized that the ultimate enforcement of the evaluation process involves dismissing or demoting deficient employees, the legal implications of evaluation become crystal clear. It is this legal aspect we will

discuss this morning. And since California has already invented the wheel in this respect, our analysis will focus on the "California approach," which you might conclude is kind of a square wheel. Nevertheless, it is a tangible, existing State law on the evaluation of teachers and administrators and it warrants study as an actual prototype, even though it may not be perfect in every sense. Therefore, we will look at the "Stull Bill," which governs evaluation in the elementary and secondary schools in California and which is summarized on the sheet of paper which is blank on one side.

The STULL BILL has been described as a "teacher tenure law" and as a "teacher evaluation law." Both descriptions are accurate. The STULL BILL is a "teacher tenure law" in that it prescribes the legal grounds upon which a public school teacher in California may be dismissed from his employment and establishes the procedures which must be used to determine if such legal grounds for dismissal actually exist. That's all "tenure" is. Stated in a simple mathematical formula:

Teacher tenure =	Specific, known reasons which are the exclusive grounds on which a teacher's employment may be terminated.	+	Specific, known procedure for holding a hearing to determine whether there are valid reasons to terminate a teacher's employment.

The STULL BILL is a "teacher evaluation law" in that it sets forth specific requirements for a teacher evaluation procedures in local public school districts in California. Stated another way, the STULL BILL overhauls the old teacher dismissal procedures and introduces a new system of teacher evaluation in California.

The concepts of "tenure" and "evaluation" are integrally linked together because the ultimate sanction invoked in a case of an unsatisfactory evaluation is dismissal. If dismissal is proposed, then the legal issue which arises is: "Did the school board properly follow its own procedures (or state-mandated procedures) in evaluating the person proposed for dismissal?" This question essentially produces a sort-of common law tenure enforceable in the Courts where the State Legislature has not adopted a statutory tenure plan.

I believe that the "teacher evaluation law" of the STULL BILL may have profoundly greater long-range significance to California local public education than its "teacher tenure" counterpart because:

1. It represents a brand new approach to teacher evaluation because in it the State Legislature has coupled a requirement that teacher evaluation standards be adopted in each school district, with a set of specific and definite guidelines for the local formulation of such standards;
2. Its effective implementation, with its express commitment for follow-up counseling of teachers with deficiencies, could serve to improve the teaching profession by upgrading teacher competency or counseling out of the profession persons who simply cannot come up to standards; and
3. Its requirement for involving teachers in the development of the actual standards for professional evaluation should augur for better understanding and enforcement of the standards adopted.

In any event, even the most skeptical observer must realize that if the "teacher evaluation" part of the STULL BILL is not adequately

implemented, that part of the "teacher tenure law" to which it is keyed, the "incompetency" grounds for teacher dismissal, cannot possibly be invoked. In short, unless a school district has a legally sufficient "teacher evaluation" program under the STULL BILL, it simply will have no basis at law to dismiss a teacher for incompetency in the classroom.

It is apparent that regardless of whether one takes the optimist's view (and focuses on the improvement of teaching performance) or the skeptic's view (and zeroes in on the legal perfection of a teacher dismissal statute) the principles of sound public school administration in California and the public schoolman's oath of office to uphold the laws of the State demand that the "teacher evaluation law" in the STULL BILL be implemented. So let's take a careful look at:

A. THE "TEACHER EVALUATION LAW" PORTION OF THE STULL BILL. This is Roman Numeral I in your "bird's-eye views."

A "bird's-eye view" of the "teacher evaluation law" may be shown in seven rubrics, as follows:

1. Effective date - September 1, 1972.

2. Each school board must adopt a uniform set of written objective evaluation and assessment guidelines for use in evaluating the professional competency of its classroom teachers and other certificated personnel. The guidelines adopted must be reasonable, clearly and concisely stated, and understandable to all to whom they apply. Because at least part of their purpose is to form the legal basis for the dismissal of teachers for incompetency, the guidelines should be reviewed prior to their adoption by the legal counsel of a school district. He will approve the legal aspects of the guidelines only if he is satisfied

that (1) they conform to the minimum essential elements of the "teacher evaluation law" of the STULL BILL and (2) they could serve as a legal basis for determining the lack of professional competency of a teacher proposed for dismissal. In this sense, the "teacher evaluation law" is akin to a penal statute, and before a court will permit its application against a teacher, the court must be satisfied that the statute substantially conforms to the legislative drafting requirements normally associated with such statutes, including lack of ambiguity, no internal inconsistencies or conflicts with other regulations, equal application for all persons similarly situated, and valid school board adoption, to mention but a few.

While the guidelines must be "uniform" throughout the local school district, this "statutory" requirement should be interpreted to mean that the same standards should apply to the same class of certificated employees. That is, elementary school teachers, secondary school teachers, and school administrators are engaged in different kinds of professional work. The STULL BILL does not require that they all be judged by the same standards, but it does contemplate that all those certificated employees within the same class be treated in a uniform manner. Since the STULL BILL grants local school boards the authority to adopt evaluation guidelines, it is within the discretion of the local school board to create, for evaluation purposes, as many classes of teachers it might reasonably decide. In other words, reasonable classifications would include, for example, different levels of elementary school teachers, different subject matter areas for secondary school teachers, and different types of school administrator responsibilities. The basic requirement is that each discrete area of evaluation

described in the third rubric, which is point No. 3 in your "bird's-eye views":

3. The specific evaluation and assessment guidelines for teachers and other certificated employees adopted by each local school board must include, at least:

1. The establishment of standards of expected student progress in each area of study and of techniques for the assessment of that progress.
2. Assessment of certificated personnel competence as it relates to the established standards.
3. Assessment of other duties normally required to be performed by certificated employees as an adjunct to their regular assignments.
4. The establishment of procedures and techniques for ascertaining that the certificated employee is maintaining proper control and is preserving a suitable learning environment.

Even a cursory reading of the four fundamental elements of the new evaluation program will impress any person familiar with the problems of personnel administration in public school districts. Essentially, two of the "four fundamentals" envision measuring the actual academic progress of students against a standard, and then judging the competency of a teacher by the degree to which he can bring his students along to meet or exceed the standard. The remaining two fundamentals involve judging a teacher's performance in professional work related to his primary "regular assignments" and his effectiveness in maintaining discipline and good order among his students.

The "four fundamentals" of evaluation constitute the heart of the STULL BILL; and it is squarely up to the education profession in California to prevent them from becoming an Achille's heel. Their effective implementation will tax even the most capable, imaginative and sophisticated teachers and school administrators.

4. Evaluation and assessment guidelines for teachers and other certificated personnel must include adequate provision for follow-up counseling. The STULL BILL clearly contemplates a continuing review with, and follow-up counseling of, teachers who are failing to meet the standards of professional competency adopted by the school board. In essence, an evaluation is not enough; the STULL BILL places the evaluator under a four-pronged obligation to a teacher who is deficient in evaluation ratings, as follows:

1. The evaluator must notify the teacher in writing of the "unsatisfactory performance;"
2. The written notice of "unsatisfactory performance" must be clearly and comprehensively stated;
3. The evaluator must actually "confer" with the teacher and make "specific recommendations" on improvement of his performance; and
4. The evaluator must "endeavor to assist" the teacher to upgrade his performance.

These four obligations owed by evaluators to teachers introduce a severe time schedule into practical school administration. If the follow-up counseling is to be done adequately, the evaluation process must commence at the beginning of each school term. The importance of promptness in initiating the evaluation process each school term is

particularly crucial in the case of probationary teachers because they must be notified no later than March 15 that the Superintendent is recommending that their services will not be required for the ensuing year or they are automatically rehired for the next year.

5. Evaluations must be in writing and transmitted to teachers and other certificated employees no later than sixty days prior to end of a school year, commencing with the current 1971-72 school year. A copy of the written evaluation and assessment guidelines also should be given to each teacher and administrator at least 60 days before the end of the school year in which the guidelines will be used.

6. A teacher or other certificated employee evaluated must be given the opportunity to append a written statement of his views about the evaluation to the evaluation report and such statement shall be a permanent part of his personnel file. We should pause a moment here and fix something firmly in our mind: The evaluation portion of the STULL BILL applies to ALL certificated personnel. While most of the discussion throughout the State of California concerning the professional evaluation and assessment requirements imposed by the STULL BILL is directed towards teachers because they are the largest single class of certificated employees, it should be emphasized that such requirements also apply with equal force to school administrators at all levels, up to, and including, the Superintendent of a school district. The evaluation and assessment guidelines applicable to school administrators may assume important legal significance in future cases involving their transfers or demotions. While it is generally assumed today that the law does not require a "hearing" on a school board action demoting or transferring a school administrator the courts will not countenance

arbitrary or capricious action on the part of any local governing board. It may well be that a court would find a school board's action of demoting or transferring a school administrator based on his lack of competency an arbitrary and capricious action on the part of a school board which had failed to enact or implement the evaluation and assessment guidelines for school administrators as required by the STULL BILL or enacted inadequate, unclear guidelines insufficient at law.

Finally, under our analysis of the "Evaluation" part of the STULL BILL, rubric No. 7:

7. <u>In developing and adopting evaluation and assessment guidelines and procedures, a school district must avail itself of the advice of certificated instructional personnel</u>.

This requirement guarantees the participation of teachers and other "certificated instructional personnel" in the development of professional standards relating to them. The involvement of teachers may be accomplished either through a teachers' committee appointed by the Superintendent or with the assistance of the Certificated Employee Council (C.E.C.) or teacher organization under the Winton Act, which is the law governing collective negotiations in California school districts. A combination of a Superintendent's Committee or Winton Act approach is also possible.

So much for the "Evaluation" part. Let us now turn to the second main part of the STULL BILL:

B. <u>THE "TENURE LAW" PORTION</u>.

The "teacher tenure law" portion of the STULL BILL will make <u>two</u> major changes to the statutory plan controlling the dismissal of public school teachers in California when it becomes fully operative in late 1972 or early 1973. Both of these changes relate to the hearing

procedure invoked to determine whether or not adequate grounds exist at law to sustain a dismissal. The two changes may be summarized as follows: The first change is:

- Dismissal hearings will be originally conducted out-of-court as an administrative hearing in accordance with the California State Administrative Procedure Act.

(This is point No. 2 in your "bird's-eye views.")

Under present state law, a permanent certificated employee and any probationary certificated employee whose dismissal is proposed "for cause," are entitled to a trial in the local Superior Court to determine if there exists sufficient grounds to warrant dismissal from school district employment. Current state law has no provision for an administrative hearing in dismissal cases involving permanent certificated employees or in which a probationary certificated employee is to be dismissed "for cause;" these cases now go immediately to the local Superior Court. Under the STULL BILL, the dismissal hearing will be heard at the administrative level out-of-court under procedural rules which guide State Administrative Hearing Officers. The STULL BILL will require that a dismissal hearing must be commenced under the California State Administrative Procedure Act within 60 days from the date of the certificated employee's demand for a hearing. The local Superior Court may become involved in such a dismissal hearing only through an appeal from the decision adduced at the administrative hearing, although on appeal, the court may "exercise its independent judgment on the evidence." The second change is:

- All dismissal hearings will be conducted by either a State Hearing Officer or a local Commission on Professional Competence. (This is point No. 3 in your "bird's-eye views.")

The legal grounds for the dismissal of permanent certificated employees or probationary certificated employees "for cause" are not changed by the STULL BILL. The same eleven grounds for dismissal set forth in Education Code Section 13403 will remain in effect. But, the STULL BILL will require that a State Hearing Officer shall conduct the hearing in cases involving six of these eleven grounds, while a "Commission on Professional Competence" shall conduct the hearing in cases concerning the other five grounds, in this way:

a. State Hearing Officer shall conduct hearing in cases involving these allegations:

(1) Commission, aiding, or advocating the commission of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or any amendment thereof.

(2) Physical or mental condition unfitting him to instruct or associate with children.

(3) Conviction of a felony or any crime involving moral turpitude.

(4) Violation of Section 9031 of this (Education) Code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(5) Violation of any provision in Sections 12952 to 12958, inclusive of this (Education) Code. These relate to membership in the Communist Party, refusing to testify about memberships, etc.

(6) Knowing membership by the employee in the Communist Party.

b. "Commission on Professional Competence" shall conduct hearing in cases involving these allegations:

(1) Immoral or unprofessional conduct.

(2) Dishonesty.

(3) Incompetency.

(4) Evident unfitness for service.

(5) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Governing Board of the school district employing him.

In both cases, the decision will be binding upon the local school board and either party may appeal from an adverse decision to the local Superior Court. Both parties are entitled to be represented by legal counsel. If the certificated employee is ordered dismissed, the employee and the school district split the costs of the hearing; on the other hand, if the employee is reinstated, the district pays all such costs.

In cases involving a hearing conducted by a "Commission on Professional Competence," the Commission shall be selected as follows:

a. One member, who must have five years experience in the specific function of the accused, shall be selected by the school board;

b. One member, who also must have five years experience in the specific educational function of the accused, shall be selected by the certificated employee; and

c. One member who shall be a Hearing Officer of the State Office of Administrative Procedure.

Parties have seven days to select members; after that, the County Board selects.

The State Hearing Officer will act as chairman and be a voting member of the Commission. Moreover, he also will be charged with the responsibility of "assuring that the legal rights of the employee are protected at the hearing."

Finally, the STULL BILL does NOT affect the non-reemployment of probationary teachers or transfer and demotion of school administrators. This is reflected in points 7 and 8 of your "bird's-eye views."

In conclusion, it should be noted that effective implementation of the STULL BILL in its two phases should result in both: (1) Better evaluation of the professional performance of teachers and other certificated employees, with its concomitant increase in the quality of instruction in the public schools, and (2) Less cumbersome methods to remove deficient instructional personnel from the schools without placing such personnel in peril due to unfair or inadequate procedures for arriving at the truth. The answer to the question of whether or not the STULL BILL will accomplish these laudable goals abides in the school boards and education profession of California.

- END -

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